

REMARKS

Reconsideration of the above-identified application in view of the amendments above and the remarks following is respectfully requested.

Claims 1-15 are in this case as filed. Claim 15 has been objected to because of informalities. Claim 15 has been rejected under § 112, second paragraph. Claims 1-4, 6, 7, and 11-15 are rejected under § 102(b). Claims 1, 5, and 8-10 are rejected under § 103. Claims 1, 11, 12, and 13 have been amended. Claims 14 and 15 have been cancelled. No extra claim fee is required.

Prior to discussing the Office Action in detail it is called to attention that the present invention is concerned with a safety bathtub, particularly designed to assure safety for people using the tub, particularly babies, the elderly and the infirm by providing means for observing and monitoring water temperature. This is a most desirable feature and it is reflected in the claims.

Drawings

The drawings are objected to under 37 CFR 1.83(a) as failing to show the pre-formed clips as recited in claims 14 and 15.

Applicant is not filing a drawing showing pre-formed clips.

Claim objections and § 112, Second Paragraph Rejections

The Examiner has objected to claim 15 as reciting identical limitations to the claim on which it depends.

The Examiner also rejected claim 15 under § 112, second paragraph, as being indefinite as reciting identical limitations as of claim 14, on which it depends. Since

no new drawing showing pre-formed clips is being filed, claims 14 and 15 have been cancelled without prejudice.

§ 102(b) Rejections – Hodak

The claims before the Examiner are directed toward a safety bathtub and a method for forming it. The safety bathtub includes at least one upstanding wall; and a built-in thermometer in the wall. The built-in thermometer includes a measuring portion and a scale portion, is mounted such that the measuring portion is immersed in water when the bathtub has water in it, and the scale portion is out of the water when the bathtub has water in it, for continual monitoring by a person outside and above the bathtub.

The Examiner has rejected claims 1-4, 6, 7, and 11-15 under §102(b) as being unpatentable over Hodak (USP 6,618,867). Specifically, the Examiner states that Hodak discloses a swimming pool including an upstanding sidewall and a built-in thermometer.

It is respectfully submitted that the Examiner has misinterpreted the patent of Hodak. The Hodak patent describes and claims a removable swimming pool border for use with a swimming pool having a sidewall and a pool liner. (Abstract) These self-adhering borders can be utilized for improving the appearance of a swimming pool, providing an overall cosmetic improvement where an unattractive water line exists or where a preprinted border has faded or discolored (col. 2, lines 52-53, 62-65). The pool border may include a thermometer purpose for covering the ends of the border without an overlap in the pre-cut swimming pool border sections (col. 3, lines 1-2) The thermometer preferably has two opposed flanges which extend outwardly along the longitudinal axis of the thermometer. These flanges define a recess or gap between the thermometer and the pool wall to provide clearance for the adjacent ends of the

pool border to slip underneath (col. 6, lines 30-36, and Fig. 6). Thus in the Hodak patent, a decorative thermometer may be used as a fastening element on a removable border on a swimming pool steel sidewall or on a pool liner.

There is no teaching or suggestion in the Hodak patent of a built-in thermometer built into the wall of the pool itself, or of a recess formed in the wall for receiving a thermometer, wherein the thermometer can be read by a person standing outside the pool, as described and claimed in the present application. On the contrary, if such a thermometer were built-into the wall of the bathtub, the decorative borders of the Hodak patent would cover it up, so it could not be read at all.

In sharp contrast with the Hodak apparatus, according to the present invention, there is provided a bathtub having a built-in thermometer in its sidewall, which permits a person outside the tub be able to continually to monitor the temperature of the water inside the tub. If desired, a recess may be provided in the sidewall of the bathtub for receiving the thermometer.

While continuing to traverse the Examiner's rejections, Applicant has, in order to expedite the prosecution, chosen to amend independent claims 1, 11 and 12 in order to clarify and emphasize the crucial distinctions between the present invention and the system disclosed by the Hodak patent cited by the Examiner. Specifically, independent claims 1, 11 and 12 have been amended to clarify that the thermometer is disposed such that it can be read by a person outside the bathtub, who is monitoring the temperature of the water inside the tub. Support for this amendment can be found in the specification, for example on page 5, lines 2-7, 21-22, page 6, line 27 to page 7, line 3 and page 7, lines 21-28. Claim 13 is clarified to recite the recess in the bathtub as being in the bathtub wall.

As to claims 2 and 3 (dependent on claim 2), the Examiner states that the Hodak apparatus is in a recess of the wall. However, as stated above, Hodak's decorative thermometer is in association with the border and not with the wall.

With regard to claim 4, the Examiner states that Hodak discloses a thermometer permanently mounted using adhesive. It is respectfully submitted that Hodak does not teach or suggest, anywhere in the patent, permanently mounting a thermometer in a pool wall. Rather, the adhesive and the magnets permit releasable application of a thermometer to a removable swimming pool border.

In sharp contrast with the swimming pool described by Hodak, according to the present invention, a safety bathtub is provided having a built-in thermometer permitting continuous monitoring of the temperature inside the tub by a person outside the tub. Since it is built-in, the thermometer cannot be removed easily from the tub by a person inside the tub, such as a playing baby. Thus, both the purpose and the structure of the Hodak swimming pool border totally differ from the safety bathtub of the present invention.

As far as claim 6 is concerned, the Examiner states that the thermometer of Hodak is an angled thermometer as it is at a generally 90 degree angle with respect to element 18 (of the patent). It is respectfully submitted that the thermometer in Hodak is a straight thermometer, in that it is a substantially flat strip with side flanges? The thermometer of the embodiment of Figs. 1 and 3 of the present invention, on the other hand, itself, defines an angle of close to 90 degrees, as it conforms to the side and top edge of the bathtub. In this way, the scale of the thermometer can seat along the top edge of the bathtub so it can be read, for example by a baby's mother, from above the tub. No such thermometer is taught or suggested in Hodak.

With regard to claim 7, the Examiner states that the thermometer in Hodak is flush with the part of the wall at 18. It is respectfully submitted that 18 in the Hodak patent does not indicate the sidewall, but rather a top rail of the swimming pool (col. 5, lines 14-16). As can be seen clearly in Fig. 6 and from the description quoted above, the thermometer in Hodak sits on top of the edges of the pool border and projects into the pool, since its purpose is to cover and hide the edges of the pool border.

On the other hand, the thermometer of the present invention is preferably flush with the side wall in which it is mounted. See for example, Fig. 2. In this embodiment, a bather, such as a baby or an infirm or elderly person, will not be scraped by the edges of the thermometer, it is recessed such that the thermometer is flush with the bathtub wall and does not protrude into the bathtub (see page 6, lines 22-23).

While continuing to traverse the Examiner's rejections, Applicant has, in order to expedite the prosecution, chosen to amend claim 7 in order to clarify and emphasize the crucial distinctions between the present invention and the swimming pool border disclosed by the Hodak patent cited by the Examiner. Specifically, claim 7 has been amended to clarify that the thermometer is mounted flush with an upstanding wall of the safety bathtub of the present invention so as not to protrude or extend into the bathtub. Support for these amendments is found in the specification on page 5, line 4, page 6, lines 1-3 and 21-22, and in Figs. 2 and 3.

Regarding claims 12 and 13, the Examiner states the method as claimed would be inherent during the normal use of the Hodak device. It is respectfully submitted that, as stated above with regard to claim 1, the method and structure of the present invention are totally different from that of Hodak. The Hodak method involves providing a removable border around a swimming pool wall or liner, and sealing the ends behind a decorative thermometer. There is no teaching or suggestion in Hodak of

mounting the thermometer in the wall of a bathtub, particularly not in a recess in the wall.

As regards claims 14 and 15, the Examiner states that the thermometer is mounted into the "clip" (at 43) preformed in the wall of the pool of Hodak. It is again noted that these claims have been cancelled without prejudice. Nevertheless, pre-formed clips remain within the scope of Claim 12. It is noted for the record that the Examiner has misinterpreted the drawings in Hodak. Referring to the text explanation, in col. 6, lines 30-40, it is stated that reference numeral 43 is a recess or gap extending from the flanges of the thermometer to an inner surface to the thermometer body to provide clearance of the adjacent ends of the pool border to slip underneath. Thus, there is no recess formed in the wall of the pool, and certainly no "clip" located in the recess.

Applicants believe that the claims as amended completely overcomes the Examiner's rejections on § 102(b) grounds as to independent claims 1, 11, and 12, as well as the dependent claims to which it was applied.. It is, therefore, respectfully submitted that all claims are not anticipated by Hodak.

§ 103 Rejection – Hodak and Parker

The Examiner has rejected claim 5 under § 103(a) as being unpatentable over Hodak in view of Parker (USP 3,965,742). Specifically, the Examiner states that it would have been obvious to utilize the digital thermometer of Parker in the swimming pool of Hodak

The patent to Hodak has been discussed above. The Parker patent discloses a digital thermometer which, in some embodiments, is suitable for use in a swimming pool.

It is respectfully submitted that Applicant is not claiming a digital thermometer, *per se*. Rather, in claim 5 he is claiming a digital thermometer in the safety bathtub claimed in amended claim 1. Even utilizing a digital thermometer of Parker in the patent of Hodak will not result in the bathtub of the present invention. As stated above, Hodak utilizes a decorative thermometer, which could be a digital thermometer, to cover the ends of a swimming pool border mounted on a liner or metal swimming pool wall. There is no teaching or suggestion in Hodak or Parker, taken separately or together, of a safety bathtub having a thermometer built into the wall of the tub to permit continuous monitoring by a person outside the bathtub, as in the present invention.

§ 103 Rejection – Lopes et al. and Blaney

The Examiner has rejected claims 1 and 8-10 under § 103(a) as being unpatentable over Lopes et al. (USP 6,578,209) in view of Blaney (USP 6,105,618). Specifically, regarding claims 1 and 8, the Examiner states that Lopes et al. disclose a plastic-formed tub for bathing an infant, a built-in temperature indicator, while the Blaney reference discloses a plug including a measuring portion and a scale portion for indicating the temperature of the water. Furthermore, regarding claims 9 and 10, the Examiner states that the thermometer of Blaney is mounted flush in a recess preformed in the wall of the tub.

The patent to Lopes et al. describes and claims a tub for bathing children configured with back rests and seating surfaces for bathing an infant in a reclined position or a toddler in an upright, seated position, and molded of a shape enabling particularly good nesting for efficient storage. A drain hole is provided along a wale

26 on the bottom of the tub that defines a tub resting point (and not an upstanding sidewall, as erroneously indicated by the Examiner) (col. 4, lines 49-52). A drain plug 36 is provided to plug the drain hole in the bottom of the tub. The drain plug may be formed of a material that changes color at elevated temperatures or include some other temperature indicator.

The tub of the Lopes et al. patent does not teach or suggest a built-in thermometer in an upstanding sidewall, nor a thermometer mounted with a portion immersed in water and a portion out of the water for monitoring by a person outside the bathtub. Rather, it discloses a thermometer pluggable into a drain hole in the bottom of the tub which is completely immersed in water when there is water in the bathtub. Like conventional thermometers, it will be covered by water, soap suds, children's toys, etc. so it is not readily readable by a person outside the tub. The Examiner states that portion 52 of the drain plug is outside of the water. However, a careful reading of the Lopes et al patent (col. 5, lines 3-4) shows that portion 52 of the plug is a graspable tab which is used to lift the plug out of the drain hole in order to open the drain.

The patent to Blaney discloses a plug for a bath or sink having a portion or attached member which changes color depending upon temperature. This plug and/or member must be immersed in water to register the temperature of the water. Contrary to the Examiner's statement, the plug does not include a measuring portion (13) and a scale portion (14). Rather, it includes a thermochromic member (13) having a color-changing indicia (14) thereon which changes color when the thermochromic member is immersed in hot water (col. 2, lines 38-45). This plug suffers from the same disadvantages as conventional thermometers which fall to the bottom of the tub and cannot be viewed from above and outside the tub.

Thus, neither the patent to Lopes et al nor the patent to Blaney teaches or suggests the use of a thermometer having a measuring portion and a separate scale portion, as claimed in the present application. Nor does either of these patents suggest positioning a thermometer with a first portion immersed in water and a second portion outside of the water. Accordingly, claims 1 and 8 are deemed to be allowable over Lopes et al in view of Blaney.

Regarding claims 9 and 10, it is clear from the structure shown in Figs. 6 and 7 that drain plug 36 cannot be flush with a wall of the tub. In fact, the drain plug is actually folded on itself so that projection 46 of one plug end can be inserted in a drain opening 48 in the other end of the plug. Thus, not only is the "thermometer" not flush with a wall (in this case, the bottom of the tub), but it is folded to as to protrude into the tub. In order to open the plug, the tab 52 is grasped to remove projection 46 from opening 48. (Col. 4, line 67, to col. 5, line 4).

The Blaney patent also teaches a plug for a bath or sink having a protruding element, or attached member, which permit the plug to be removed from a drain hole in the tub.

Thus, neither the patent to Lopes et al nor the patent to Blaney teaches or suggests the use of a thermometer built into a sidewall of a tub and disposed flush with the wall, as claimed in the present application. Furthermore, claims 9 and 10 depend from, and add additional limitations to claim 8. Accordingly, claims 9 and 10 are deemed to be allowable over Lopes et al in view of Blaney.

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The cited references that are not relied upon, Haswell et al. (USP 5,487,393), DE 29900164 (Yuecel) and JP 0800468 (Matushita Electric) have been noted. They are clearly even less relevant than the references discussed above.

In view of the above amendments and remarks it is respectfully submitted that independent claims 1, 11 and 12, and hence dependent claims 2-10 and 13, are in condition for allowance. Prompt notice of allowance is respectfully solicited.

Should the examiner be of the opinion that outstanding issues remain, it is requested that the undersigned attorney be called to discuss it.

Respectfully submitted,



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